

General Information Letter: After a tax has been assessed, the taxpayer must pay the tax, file a refund claim and protest the denial of the claim in order to receive an administrative hearing.

February 22, 2007

Dear:

This is in response to your letter dated December 7, 2006 regarding the above-mentioned taxpayer. The nature of your letter and the information provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be accessed from the Department's web site at www.Iltax.com.

Your letter states as follows:

The above taxpayer has requested that we appeal the Illinois Department of Revenue decisions on the taxpayer's use of net operating losses relating to the corporate income tax returns for the past ten years.

A brief history of the tax issue:

Our firm took over accounting services for COMPANY1, Inc. from the prior accountant in the fall of 2001 with the preparation of the taxpayer's 1999 income tax return. The change of accounting firms was a result of the prior accountant having cancer. The prior accountant had completed the taxpayer's 1998 Federal and STATE corporate income tax returns and unfortunately omitted the Illinois return.

When we took over the accounting functions, there were past due returns for 1999 and 2000. We prepared those returns, as well as the returns for 2001 through 2004, which are currently filed. In February, 2005, our client received a notice from Ms. Z (Central Processing Bureau) that a 1998 Illinois return was never filed. After receiving the notice, we prepared and filed the 1998 Illinois income tax return. Subsequent to the filing of that return, we became aware of differences in net operating losses from our records (carry forward schedules) and the Illinois Department of Revenue.

Our client no longer had copies of the records and the prior accountant's widow did not either. We requested and received copies of the Illinois tax returns for the period 1993 through 1997.

During this process, it was noted that the taxpayer's returns were filed both as unitary returns and as non-unitary in some years. If the returns had been corrected to properly reflect the unitary tax treatment, the issues with the net operating loss carryover and any tax liability would have been eliminated. Unfortunately, the taxpayer was not notified by the Illinois Department of Revenue in a timely manner of the disallowed carryovers from 1998, and therefore the taxpayer was not allowed to carry back net operating losses that would have eliminated the tax liability.

At this time, the 2001 tax year is closed and there is no longer a possibility to correct the tax liability.

We are requesting that the liability for 2001 be reversed to reflect what the taxpayer would have paid if the amended returns could have been prepared.

We are enclosing the following correspondences for your reference:

Illinois LTR 393 dated 2/22/05
COMPANY2 letter dated 3/19/05
Illinois LTR 76 dated 4/09/05
Illinois LTR 351 dated 6/16/05
Illinois LTR dated 9/09/05
COMPANY2 letter dated 9/14/05
COMPANY2 letter dated 12/15/05
Illinois letter dated 9/11/06
Illinois LTR-351 dated 10/18/06
Illinois LTR-BTR-76 dated 11/24/06

Legal Services' Response

The term "unitary business group" is defined in section 1501(a)(27) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/1501(a)(27)) to mean, in general, a group of persons related through common ownership whose business activities are integrated with, dependent upon and contribute to each other. Due to the factually based nature of this definition, the Department does not issue rulings as to whether or not a certain group of activities constitutes a unitary business. Department determinations on this issue are generally made in the course of examination of a return.

Section 908 of the IITA sets forth the administrative appeals process in respect to a notice of deficiency. Under this section, a taxpayer has 60 days (150 days if the taxpayer is outside the United States) after issuance of a notice of deficiency to file a written protest with the Department. See 86 Ill. Adm. Code 100.9000 and 86 Ill. Adm. Code 200.120. Where tax has already been assessed, the taxpayer must pay the tax due and file a claim for refund. Section 910 of the IITA sets forth protest procedures where a claim for refund has been denied. A claimant has 60 days from the Department's denial of a claim to file a written protest with the Department.

As stated above, this is a GIL. A GIL does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you have questions regarding this GIL you may contact Legal Services at (217) 782-7055. If you have further questions related to Illinois income tax laws, visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)